

SERVICE DATE - SEPTEMBER 15, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC.—ABANDONMENT EXEMPTION—
IN LAS ANIMAS COUNTY, CO

Decided: September 11, 2003

On September 1, 2000, Trinidad Railway, Inc. (Trinidad) invoked the class exemption procedures for out-of-service rail lines at 49 CFR 1152.50 to abandon a 28-mile segment of rail line in Las Animas County, CO, between milepost 2.0 at Jensen and the end of the Trinidad line at milepost 30.0. Notice of the exemption was served and published in the Federal Register on September 21, 2000 at 65 FR 57239. On September 18, 2000, the Rails to Trails Conservancy (RTC) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to negotiate for rail banking and interim use of the line as a trail. By decision served on October 20, 2000, environmental conditions were imposed on the proposed exemption, but before the exemption went into effect, Rail Ventures, Inc. (Rail Ventures) timely filed a notice of its intent to invoke the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 to acquire the line for continued rail service. That filing, and subsequent extensions, stayed the effective date of the abandonment exemption covered by the notice. On December 5, 2000, Rail Ventures timely filed its OFA, offering to purchase the line.

Shortly before that, however, on October 31, 2000, after having received notice of Rail Ventures' forthcoming OFA, Trinidad sold its entire 30-mile line (including the 28-mile segment for which it sought abandonment authority in this proceeding) to Kern Valley Railroad Company (Kern Valley), which subsequently invoked the class exemption procedures at 49 CFR 1150.31 to obtain authorization for the purchase. Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc., STB Finance Docket No. 33956 (notice served and published Nov. 21, 2000). Kern Valley stated that it did not acquire the line segment to provide rail service but, rather, to salvage the rail property once it was abandoned. Kern Valley also acknowledged that the line remained subject to the section 10904 process, a request for issuance of a NITU, and other conditions imposed on the notice of abandonment exemption.

In a decision served on December 8, 2000, Rail Ventures was found to be a financially responsible entity, and the effective date of the abandonment exemption was postponed to permit the OFA process to proceed. Rail Ventures pursued its OFA, but the parties were unable to reach an agreement on the terms and conditions for sale of the line under the OFA process. Accordingly, Rail Ventures asked the Board to set the terms and conditions and, in a decision

served on April 17, 2002, the Board set the purchase price for the line, established terms for its transfer, and directed Rail Ventures to notify the Board and Kern Valley in writing whether it would accept those terms and conditions. Rail Ventures accepted the terms and conditions and, in a decision served on May 15, 2002, the Board authorized Rail Ventures to acquire the line.¹ However, by letter filed on July 29, 2002, Kern Valley notified the Board that Rail Ventures had elected not to purchase the line.²

On August 11, 2003, American Trails Association, Inc. (ATA), filed a request for the issuance of a NITU under the Trails Act to negotiate with Kern Valley for acquisition of that portion of the right-of-way between milepost 2.0 at Jensen and milepost 15.11 in Segundo, a distance of 13.11 miles.³ ATA submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. In a response filed on the same date, Kern Valley indicated that the line had not been abandoned and that it was willing to negotiate with ATA.

Because ATA's request complies with the requirements of 49 CFR 1152.29 and Kern Valley is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period described below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, Kern Valley may fully abandon the specified portion of the line. See 49 CFR

¹ The decision also indicated that the notice of abandonment exemption would be dismissed upon consummation of the sale.

² Also, in compliance with the Board's April 17, 2002 decision, Kern Valley gave 30 days' notice that, effective August 28, 2002, it intended to halt common carrier operations on the line and exercise its abandonment authority. However, because environmental conditions imposed on the grant of abandonment authority remain in effect, consummation of the abandonment has not yet taken place and the Board retains jurisdiction over the line.

³ RTC's earlier NITU request was held in abeyance pending the outcome of the OFA process. By letter filed on August 20, 2002, Kern Valley stated that it was unwilling to negotiate a trail use agreement with RTC. Because the Trails Act permits only voluntary interim trail use, the Board issued a decision on October 2, 2002, that terminated the OFA process and denied RTC's request for issuance of a NITU. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision and notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on September 21, 2000, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for that portion of the line between mileposts 2.0 and 15.11 for a period of 180 days from the service date of this decision and notice, subject to the conditions imposed in the October 20, 2000 decision.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. As to the relevant portion of the line, if an agreement for interim trail use/rail banking is reached during the 180-day period (until March 13, 2004), interim trail use may be implemented. If no agreement is reached by that time, Kern Valley may fully abandon that portion of the line (if pertinent environmental conditions have been satisfied).

7. This decision and notice is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary